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October 16, 1998

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VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: CC Docket 98-147

Dear Ms. Salas:

Enclosed for filing in the above captioned matter, please find an original and four (4) copies of Reply Comments of CTSI, Inc.

Please acknowledge receipt by date-stamping the enclosed extra copy of this filing and returning it to me in the envelope provided. If you have any questions regarding this filing please contact me at 202/424-7770.

Sincerely,

Pamela S. Arluk

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Deployment of Wireline Services	)	CC Docket No. 98-147
Offering Advanced Telecommunications	)	
Capability	)	

REPLY COMMENTS OF CTSI, INC.

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October 16, 1998

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SUMMARY

CTSI urges the Commission to reject the ILECs' suggestions regarding the separate affiliate proposal and instead require a completely divested affiliate. It is plain from the ILEC comments in this proceeding that the current Commission separate affiliate proposal creates substantial opportunities for the ILECs to blur the separation requirements and directly provide advanced telecommunications services. However, permitting the ILECs to blur the lines between the ILEC and its advanced telecommunications affiliate could well diminish the potential for robust competition in the advanced telecommunications market.

Accordingly, to clarify the Commission's policies and to ensure that the ILECs are unable to use a separate affiliate to unlawfully discriminate against CLECs, the Commission should require full divestiture between an ILEC and its affiliate offering advanced telecommunications services in the same exchanges. Pursuant to a complete divestiture scenario, it will be clear that the affiliate will have the same incentives as any other CLEC and will not be unfairly favored by the ILEC.

CLECs unanimously argued that the Commission should adopt national minimum collocation standards to promote competition. The ILECs' arguments against national standards are disingenuous and are intended to promote the inconsistency and uncertainty that has made collocation difficult. Moreover, the Commission should reject the ILECs' arguments against providing additional types of collocation, including cageless collocation. Cageless collocation decreases costs for CLECs and Ameritech's provision of cageless collocation indicates that any ILEC security concerns could be easily resolved.

With regard equipment that could be collocated, the Commission should reject the ILECs' narrow interpretations as to the type of equipment to be collocated. Because the latest

telecommunications equipment can perform a number of functions beyond the narrow functions of interconnection or access to unbundled network elements, the Commission should require more flexibility from the ILECs. The Commission should also require the ILECs to give CLECs more information regarding space availability for collocation. Tours to identify additional areas for potential collocation should be required.

CLECs were also unanimous in their agreement that the Commission should adopt minimum standards for local loop unbundling and should provide conditioned loops, which are essential to the provision of advanced services. The Commission should reject the ILEC arguments that requiring the provision of conditioned loops somehow requires the ILECs to provide a "superior quality network." Loop conditioning is an everyday aspect of providing a variety of services over the local loop.

The Commission should also require sub-loop unbundling and reject the ILECs' arguments that it is not technically feasible. Sub-loop unbundling may be the only means of accessing a loop to provide advanced services.

Finally, the Commission should reject the BOC arguments for interLATA relief. The Commission should not reward the BOCs' anticompetitive behavior by permitting modification in LATA boundaries when the BOCs have not complied with Section 271. Such modifications would plainly violate Section 271 and would diminish BOC incentives to open up the local loop to competition.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services	)	CC Docket No. 98-147
Offering Advanced Telecommunications	)	
Capability	)	

REPLY COMMENTS OF CTSI, INC.

CTSI, Inc. ("CTSI"), through undersigned counsel, hereby respectfully submits its Reply Comments on the Notice of Proposed Rulemaking issued by the Commission in the above-captioned proceeding.[1]

I. INTRODUCTION

CTSI is a competitive local exchange carrier ("CLEC"), currently operating in Pennsylvania and New York providing local exchange services over its own facilities and over Bell Atlantic's ("BA") unbundled loops. CTSI is also certificated to provide local exchange services in Maryland. In its initial comments in this proceeding, CTSI expressed its concern that competitive local exchange carriers ("CLECs") must be able to gain nondiscriminatory access to the incumbents' local networks in order to effectively compete in the advanced telecommunications market. To that end, CTSI urged the Commission to ensure that any exception allowing incumbents to provide services through "separate" subsidiaries is carefully crafted to prevent anticompetitive conduct on the part of the incumbent local exchange carriers ("ILECs").

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[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, released August 7, 1998 ("*Section 706 NPRM*").

Moreover, CTSI urged the Commission to adopt national standards for collocation and loop unbundling. Specifically, CTSI believes that it is essential to competition to ensure additional and reasonably priced collocation options are available to CLECs and that ILECs are required to make space available for collocation. Similarly, the Commission should ensure that CLECs obtain access to the "last mile" of the local loop to ensure a competitive advanced telecommunications market.

The ILEC comments in this proceeding regarding the separate subsidiary proposal, collocation and unbundling only increase CTSI's concerns that ILECs will continue to use whatever means are at their disposal to hinder competition. Regarding the Commission's separate subsidiary proposal, the ILECs do not even attempt to conceal that they wish to avoid the separate subsidiary requirement and provide advanced telecommunications directly, and avoid complying with Sections 251(c) and 271. As stated by numerous initial commenters, Sections 251(c) and 271 are the core competitive provisions of the 1996 Telecommunications Act (the "Act"). Accordingly, the Commission cannot permit the types of relationships suggested by the ILECs between the incumbent and its affiliate without determining that the affiliate would be a successor or assign pursuant to Section 251(h).

In addition, the ILECs make clear in their comments that they will continue to resist having reasonably priced collocation available to CLECs. ILECs expressly opposed any requirement to offer more options for collocation or to permit the collocation of additional equipment. Significantly, ILECs want to continue to hamper competition by opposing any requirement that they provide CLECs with additional information on space availability. Finally, it is clear that without

Commission intervention, ILECs have no intention to permit CLECs reasonable access to the local loop.

II. The Commission Should Require Any Advanced Services Separate Affiliate to be Fully Divested

It is clear from the ILEC comments in this proceeding that the Commission's separate affiliate proposal creates substantial opportunities for the ILECs to blur the separation requirements and directly provide advanced telecommunications services. For example, Ameritech asks the FCC to clarify that the rules would permit ILECs to jointly market their own local exchange service offerings with services offered by their advanced telecommunications affiliate.[2] Bell Atlantic believes that there is no reason to restrict the transfer of information, the transfer of customers, or the sharing of CPNI.[3] GTE states that the affiliated carrier and the ILEC should be able to use the same brand name and trademarks.[4] Moreover, many of the ILECs suggested that the Commission implement non-structural safeguards, which would permit extensive sharing of resources, instead of a separate affiliate requirement.[5]

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2 Ameritech Comments, at 54.

3 Bell Atlantic Comments, at 29.

4 GTE Comments, at 45-46.

5 See, e.g. U S West Comments, at 20-24; Bell Atlantic Comments, at 24; Bell South Comments, at 18-19.

Permitting the ILECs to blur the lines between the ILEC and its affiliate could well diminish the potential for vital and robust competition in the advanced telecommunications market. As CTSI pointed out in its initial comments, the separate affiliate proposal presents the danger of an ILEC-owned affiliate that is not subject to the requirements of Sections 251(c) and 271.[6] The intention of the separation rules proposed by the Commission and multiple initial commenters is to ensure that, if the affiliate is excused from the ILEC requirements, it will not receive the benefits of ILEC resources. The ILECs' suggestions regarding substantial resource sharing completely undercut that theory.

For example, as many CLECs stated in their initial comments, permitting the sharing of trade names and joint marketing would be very harmful to competition.[7] As explained in CTSI's initial comments, permitting an affiliate to use the ILEC's brand name and/or jointly market services with the ILEC would allow the affiliate to utilize the incumbent's continuing bottleneck control over the local network [8] Similarly, any joint marketing among the ILEC and the affiliate would permit the affiliate and ILEC to bundle its local and information services and would give customers the impression that the ILEC would be providing the advanced telecommunications services. The ILECs wish to blur those lines and be able to jointly market, transfer substantial resources, share

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6 CTSI Comments, at 2-3.

7 *See* Quest Comments, at 45; Telehub Comments, at 4; Hyperion Comments, at 4; RCN Comments, at 5; Allegiance Comments, at 21.

8 CTSI Comments, at 4.

customer information and trade names. Such policies are unacceptable if the affiliate is going to be treated as an independent CLEC.

Accordingly, to clarify the intention of the Commission's policies and to ensure that the ILECs are unable to use a separate subsidiary to unlawfully discriminate, CTSI urges the Commission to require full divestiture between an ILEC and its affiliate offering advanced telecommunications services in the same exchanges. As the Commission can see from the ILEC initial comments, any attempt for partial separation would be unduly confusing and would open the door for abuse. Complete divestiture, which permits no overlapping interest of any kind, would be a clear line rule that would be administratively easy to implement.

CTSI, thus, recommends that the Commission can only ensure the lack of anticompetitive behavior by requiring ILECs to fully divest themselves of any ownership or other interest in an advanced telecommunications affiliate. As Level 3 noted in its comments, "the lesson of the Bell System is that ***structural*** separation is much more effective in removing conflicts of interest stemming from control of bottleneck facilities than any other approach."[9] If the ILECs want to partake in the provision of advanced telecommunications services independent of the requirements of Sections 251(c) and 271, the ILECs should be required to spin off a new entity. As noted by many commenters, there should be sufficient independent ownership of the affiliate to illustrate

[9] Level 3 Comments, at 5.

complete divestiture.[10] Moreover, the assets of the ILEC which are to be assigned to the affiliate would have to be appraised by an outside expert. Any personnel moving to the new entity would have to sever their ties to the ILEC. The officers and directors should have no prior association with the ILEC and must agree not to accept employment at the ILEC for a minimum period of five years after the divestiture. Pursuant to this complete divestiture scenario, it will be clear that the affiliate will have the same incentives as any other CLEC and will not be unfairly favored by the ILEC. Only a completely divested affiliate will truly promote a competitive environment for advanced telecommunications services.

III. The Commission Should Adopt Strengthened Collocation Standards

As noted by virtually all of the CLEC commenters, national minimum collocation standards would promote competition by providing greater predictability and certainty for investment and by minimizing the time and expense required for collocation.[11] Although CLECs agreed that states should have the ability to adopt additional requirements to address state-specific issues, national standards should be adopted as minimum requirements for ILECs.

The ILECs' arguments against national standards are disingenuous and are intended to continue to promote the inconsistency and uncertainty that has made collocation difficult. The

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10 *See* RCN Comments, at 7; Telehub Comments, at 5; Westel Comments, at 6; Quest Comments, at 44.

11 *See, e.g.,* Sprint Comments, at 10, Cable & Wireless Comments, at 9; McLeod Comments, at 8; Network Plus Comments, at 8.

ILECs argue that the states, with their greater knowledge of local conditions, should continue to be at the forefront of implementing collocation and unbundling rules.[12] The ILECs real intention, however, is to continue the inconsistency and expense that has plagued collocation. The CLECs agree that the states will continue to play a role in fashioning collocation rules, however, the Commission should adopt minimum standards that will assure some level of consistency.

A. The Commission Should Require Increased Options

The Commission should also reject the ILECs' arguments against providing additional types of collocation, including cageless collocation. As explained by a number of commenters, cageless collocation decreases the costs for CLECs.[13] The only reason the ILECs give for opposing such collocation is security concerns, which could certainly be addressed either by the Commission's rules or by state commissions. In addition, Ameritech already provides cageless collocation, which indicates that such security concerns can be easily resolved.[14]

The Commission should also reject the ILECs' arguments regarding collocation equipment. The ILECs are vehement about limiting the equipment that can be collocated because they want to

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[12] *See* Ameritech Comments, at 32-37; Bell Atlantic Comments at 41-43; Bell South Comments, at 44; GTE Comments, at 60; SBC Comments, at 20; U S West Comments, at 42.

[13] *See, e.g.,* KMC Comments, at 16; Allegiance Comments, at 4; ICG Comments, at 21; GST Comments, at 30.

[14] Ameritech Comments, at 42.

limit the CLECs' ability to effectively compete.[15] As noted in the *Section 706 NPRM*, the latest telecommunications equipment can perform a number of functions beyond the narrow functions of interconnection or access to unbundled network elements.[16] It would impose substantial costs on new entrants if they were required to purchase multiple pieces of equipment instead of being able to take advantage of more efficiently designed equipment, especially since the ILECs will be using such equipment. The Commission should therefore permit collocation of any equipment that is used for either interconnection and access to unbundled elements even if also used for other telecommunications functions such as switching.

CTSI also urges the Commission to reject the ILEC protestations against giving CLECs increased information with regard to collocation space. ILECs' argue that the Commission should refrain from burdening them with increased information requirements, such as tours of their central offices, if they deny a collocation request based on space.[17] The ILECs, however, seem to forget that it is their burden, under Section 251 to provide interconnection and unbundled access to CLECs. Therefore, if they are denying collocation requests, it is absolutely legitimate for the Commission to require the ILEC to provide additional information as to space availability. Moreover, as many

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[15] *See* Ameritech Comments, at 39; Bell Atlantic Comments, at 38-39; GTE Comments, at 61-62; SBC Comments, at 15-16; U S West Comments, at 36-38.

[16] *Section 706 NPRM*, ¶ 128.

[17] *See, e.g.*, Ameritech Comments, at 47; Bell Atlantic Comments, at 43, Bell South Comments, at 47; GTE Comments, at 72.

CLEC commenters noted, ILECs have been denying collocation requests claiming unavailable space, so this is a current problem that the Commission needs to address.[18]

CTSI agrees with the commenters recommending that ILECs be required to post information regarding available collocation on their Website.[19] Moreover, CTSI agrees with Westel that the Commission should establish a rebuttable presumption in favor of collocation if the CLEC can identify a specific location where such request could be accommodated.[20]

IV. The Commission Should Require Increased Access to Local Loops

CLECs unanimously agree that the Commission should adopt national minimum standards for local loop unbundling, should require ILECs to provide conditioned loops and should require sub-loop unbundling. Because the ILECs did not provide any persuasive arguments against the Commission's tentative conclusions regarding loop unbundling, the Commission should not hesitate to implement these requirements.

First, CLECs agree with the Commission's tentative conclusion that it should adopt national minimum standards for local loop unbundling to increase predictability and certainty, which will facilitate the entry of CLECs into the advanced services market.[21] Moreover, the vast majority of

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[18] RCN Comments, at 13-14; e-spire Comments, at 29; Westel Comments, at 16.

[19] Telehub Comments, at 8; Level 3 Comments, at 11.

[20] Westel Comments, at 17.

[21] KMC Comments, at 19; RCN Comments, at 15; GST Comments, at 37.

CLECs urge the Commission to require ILECs to provide conditioned loops. As explained by a number of CLECs, unless incumbents are required to provide conditioned loops on request, new entrants will not be able to provide advanced services except where the loop in question is already free of loading coils, bridge taps, and other devices that can interfere with the provision of advanced services.[22] Moreover, contrary to the ILECs' arguments, requiring incumbents to provide conditioned loops does not constitute a requirement that ILECs provide a superior quality network. Loop conditioning is an everyday aspect of providing a variety of services over the local loop. ILECs add to, or remove from, loops a variety of devices on a continuing basis in order to provide adequate service. Accordingly, the Commission should reject the ILECs' attempts to characterize a requirement to provide loop conditioning as akin to a requirement that they provide special, or superior service.

The Commission should also reject the ILECs' arguments that a sub-loop unbundling requirement is not technically feasible.[23] It is evident from the more than two years since the 1996 Act passed that failing to require sub-loop unbundling has hindered the development of competition. As stated by many CLECs, sub-loop unbundling may be the only means of accessing a loop to

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[22] US Xchange Comments, at 10; NEXTLINK Comments, at 19-21; GST Comments, at 33.

[23] *See* Ameritech Comments, at 18; Bell Atlantic Comments, at 52; SBC Comments, at 45.

provide advanced services.[24] Moreover, sub-loop unbundling can be accomplished by access at intermediate points in the loop between the central office and the end user's premises such as at telephone poles and remote pedestals. Thus, the Commission should not accept ILEC arguments that sub-loop unbundling is not technically feasible.

V. The Commission Should Reject BOC Requests for InterLATA Relief

In arguing for interLATA relief, the BOCs have the audacity to argue that the interLATA prohibition is the principal regulatory barrier to robust competition and investment in the advanced telecommunications market.[25] The BOCs explain that LATA boundaries discourage investment in advanced telecommunications services by forcing the BOCs to deploy redundant facilities in every LATA in which they seek to provide service.

In making their arguments, the BOCs forget that they significantly control their ability to provide interLATA services. Once the BOCs meet the competitive checklist outlined in Section 271 of the Act, the Commission will approve the BOC's application to provide interLATA services. The fact that BOCs are still restrained from providing such services is a direct result of the anticompetitive behavior exhibited by the BOCs against CLECs. As stated by numerous commenters, the Commission must not reward this behavior by permitting modifications in LATA

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[24] *See* Intermedia Comments, at 58; US Xchange Comments, at 10; xDSL Comments, at 7; KMC Comments, at 22.

[25] Bell Atlantic Comments, at 3-4; Bell South Comments, at 32-33, SBC Comments, at 10; U S West Comments, at 50-54.

boundaries as a means to permit BOC interLATA entry.[26] Such modifications would be in plain violation of Section 271 of the Act and would diminish BOC incentives to open up the local exchange to competition.

VI. Conclusion

For the foregoing reasons, CTSI urges the Commission to require any separate subsidiary to be fully divested. In light of the comments of the ILECs' it is obvious that without full divestiture they have no intention of establishing an affiliate that is truly separate. In addition, the Commission should reject the ILECs' arguments with regard to collocation and local loop requirements. It is obvious that the ILECs are resisting additional requirements in an attempt to further hinder competition.

Respectfully submitted,

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October 16, 1998

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[26] NEXTLINK Comments, at 28; Hyperion Comments, at 6; KMC comments, at 25; Allegiance Comments, at 27; McLeod Comments, at 10; Cable & Wireless Comments, at 17.

CERTIFICATE OF SERVICE

I, Katherine A. Swall, hereby certify that on this 16th day of October, 1998, a copy of the foregoing Reply Comments of CTSI, Inc. was hand delivered to the parties listed below.

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